

The City Attorney  
City of San Diego  
MEMORANDUM  
236-6220

DATE: June 23, 1987

TO: Jan Beaton, Acting Retirement Administrator  
FROM: City Attorney  
SUBJECT: Interpretation of Municipal Code section  
24.0514

Your memorandum of March 12, 1987, subject as above, asks us what compensation is to be offset from an industrial retirement payment received by an ex-employee.

This subject has been addressed on several occasions in the past, although not in the recent past. The history behind the provision envisioned that any industrially retired employee should have his or her retirement allowance reduced by compensation earned by that individual in private or other public enterprise. This offset provision was made effective to

those persons hired on or after October 1, 1978. However, a similar provision was contained in the Municipal Code many years ago but repealed because of administrative difficulty in its enforcement.

The language of Mun. Code . 24.0514 could stand further explication but it has been our long standing view that compensation offset was intended to mean "net" compensation, not "gross" compensation. To view it otherwise would impose an unfair and inequitable result upon industrially retired employees. There would be many instances most recently that of Steve McIntyre, retired police officer wherein the compensation treated in its gross amount disregarded all costs of doing business, thereby ignoring entrepreneurial expenses which even the Internal Revenue Service recognizes. In the case of Steve McIntyre, we were faced with a situation wherein a disabled police officer, who attempted to engage in meaningful employment, would have had his disability retirement allowance reduced almost to zero. That is not the purpose or intent of Mun. Code . 24.0514. We and the system are concerned solely with "net income," giving full recognition to costs of earning such compensation.

You are advised that this interpretation of Mun. Code . 24.0514 is our analysis and opinion regarding compensation to be offset. We reach such conclusion based upon personal knowledge of the

legislative history and purpose and intent stated publicly prior to and during its adoption.

I would recommend that the section be amended during the forthcoming series of amendments to clarify and reflect that view.

JOHN W. WITT, City Attorney

By

Jack Katz, Chief Deputy

JK:mm:341.1

MS-87-7